

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #12	CCRB Case #: 201805312	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/15/2017 6:00 AM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 2/15/2019	EO SOL 2/15/2019	
Date/Time CV Reported Mon, 06/25/2018 5:18 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 07/03/2018 11:03 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Allan Ward	520	949783	NARCBBN
2. Officers			NARCBBN
3. POM Vincent Demarino	04585	953812	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Peter Wong	01824	918490	NARCBBN
2. DT3 David Solmonsohn	03336	933374	NARCBBN
3. LT Eduard Dombrowschi	00000	930514	NARCBBN
4. DT3 Rogelio James	02660	925509	NARCBBN
5. DT3 Daniel Mizvesky	1465	946012	NARCBBN
6. DT3 Samuel Perez	232	946107	NARCBBN
7. POM Nicholas Kowatch	09969	951884	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Allan Ward	Abuse: Police Officer Allan Ward entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Allan Ward	Abuse: Police Officer Allan Ward searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Vincent Demarino	Force: Police Officer Vincent Demarino used physical force against § 87(2)(b)	§ 87(2)(b)
D. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Allan Ward	Force: Police Officer Allan Ward used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Vincent Demarino	Force: Police Officer Vincent Demarino used physical force against § 87(2)(b)	§ 87(2)(b)
G. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

Kings County Assistant District Attorney Kelli Muse reported this incident with IAB via telephone on behalf of § 87(2)(b) on June 25, 2018, ten months after the incident date, generating log number 18-24748. The CCRB received this case on July 3, 2018.

On August 15, 2017, at approximately 6:00 a.m., officers from Brooklyn North Narcotics executed a search warrant at § 87(2)(b), in Brooklyn (**Allegations A and B – Abuse of Authority, § 87(2)(g)**). PO Vincent Demarino and officers utilized a forcible takedown against § 87(2)(b) (**Allegations C and D – Force, § 87(2)(g)**). PO Allan Ward (who has since been promoted to detective), PO Vincent Demarino, and officers allegedly used physical force against § 87(2)(b) (**Allegations E and F – Force, § 87(2)(g)**; **Allegation G – Force, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were arrested as a result of this incident. § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were both charged with § 87(2)(b).

Given that this incident occurred inside of an apartment where there was no security video footage. Also, given that the officers involved were from Brooklyn North Narcotics, and because the incident occurred before the body-worn camera (BWC) program began, BWC footage was not located. Therefore, no relevant video footage was located for this case.

Findings and Recommendations

Allegation A – Force: Police Officer Allan Ward entered § 87(2)(b), in Brooklyn.

Allegation B – Force: Police Officer Allan Ward searched § 87(2)(b), in Brooklyn.

It is undisputed that officers entered and searched § 87(2)(b), in Brooklyn, pursuant to Search Warrant § 87(2)(b). It is also undisputed that PO Ward was the investigating officer on the warrant.

The investigation obtained a copy of Search Warrant #§ 87(2)(b), issued by the Criminal Court of the City of New York on August 10, 2017, which judicially ordered officers to enter the location and search for narcotics without first announcing their presence (Board Review 01).

A search warrant issued by a New York City criminal court may be executed pursuant to its terms. Criminal Procedure Law, Section 690.50 (Board Review 02).

§ 87(2)(g)

Allegation C – Force: Police Officer Vincent Demarino used physical force against § 87(2)(b)

Allegation D – Force: Officers used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was standing at the moment officers approached him during their entry into the apartment. It is also undisputed that § 87(2)(b) was forcibly taken to the ground.

§ 87(2)(b) alleged that he used the bathroom and, upon exiting, he heard a loud bang on the front door and rapid footsteps. A flashlight was shone in § 87(2)(b)'s eyes, preventing him from seeing anything, so he stood still and did not move. Approximately four plainclothes

officers then grabbed § 87(2)(b) by his shoulders and pushed him face down onto the ground (Board Review 03).

PO Demarino testified that he was assigned as PO Ward's security for the warrant execution, and observed § 87(2)(b) running from the couch towards the bathroom upon officers entering the apartment. § 87(2)(b) tried entering the bathroom and closing the door behind him, but PO Demarino grabbed the door before it could close. § 87(2)(b) put his hands up while facing PO Demarino, and PO Demarino grabbed both of § 87(2)(b)'s hands. § 87(2)(b) tried to pull his hands away from PO Demarino, but PO Demarino forcibly took § 87(2)(b) to the ground – though he could not recall whether he had a hold of § 87(2)(b) during the takedown. PO Demarino denied that any other officer assisted him in taking § 87(2)(b) down to the ground (Board Review 06).

PO Ward testified that, for the execution of the search warrant, he was assigned to “bunker one” and was equipped with his firearm and bunker shield. Upon entering the apartment, PO Ward observed § 87(2)(b) run from the living room towards the bathroom and begin disposing of a white powder-like substance out of the bathroom window. PO Ward holstered his weapon and tried to pin § 87(2)(b) against the wall by pressing the shield against § 87(2)(b)'s back, but denied striking § 87(2)(b) with the shield. PO Ward squeezed into the bathroom with § 87(2)(b) and tried to grab his arm to apprehend him, but § 87(2)(b) flailed his arm. PO Ward told § 87(2)(b) to stop resisting and show his hands, and denied using any additional tactic to subdue § 87(2)(b). An officer, whom PO Ward could not recall, performed a soft takedown on § 87(2)(b) pushing § 87(2)(b) to the ground while holding onto his arm (Board Review 05).

TRI Report #§ 87(2)(b), generated by PO Demarino, notes that PO Demarino utilized a forcible takedown against § 87(2)(b). The report notes that § 87(2)(b) was pushing/shoving and wrestling/grappling against officers. The report further notes that § 87(2)(b) did not sustain any injuries (Board Review 16).

Det. David Solmonsohn, who was assigned to “cuff and toss” during the execution of the warrant, did not have an independent recollection of this incident and could not provide any testimony for these allegations (Board Review 07).

§ 87(2)(g)

Officers are permitted to use physical force to take a subject into custody. Some factors to consider when determining when to use force are the nature of the circumstances and the actions taken by the subject. NYPD Patrol Guide, Section 221-01. Passive resistance is defined as partaking minimum physical action to prevent a member from performing their lawful duty. NYPD Patrol Guide, Section 221-02 (Board Reviews 18 and 19).

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Force: Police Officer Allan Ward used physical force against § 87(2)(b)

§ 87(2)(b) alleged that, while on the ground, PO Ward, whom he identified by name, grabbed him by the head and slammed his face down once into the ground, causing § 87(2)(b)'s inner lower lip to lacerate (Board Review 03).

§ 87(2)(b) provided an unsworn phone statement to the CCRB. She stated that she was placed in handcuffs during the warrant execution while inside of her bedroom, and that she was unable to see § 87(2)(b)'s apprehension based on where she was (Board Review 08).

§ 87(2)(b) was ultimately unresponsive to contact attempts made by the investigation. Therefore, a statement regarding this incident from § 87(2)(b) could not be obtained (See IAs).

§ 87(2)(b)'s medical records were obtained from § 87(2)(b). § 87(2)(b) went to the hospital in police custody on the date of the incident and complained of pain to his right ribs and left hips as a result of being tackled and punched by the police in the ribs and head. There was no mention within the records of an observation or diagnosis of a laceration to § 87(2)(b)'s lip (See Privileged Documents).

PO Ward denied interacting with § 87(2)(b) to any extent upon § 87(2)(b) being taken to the ground, and ultimately did not see any interaction regarding officers and § 87(2)(b). He denied using any force against § 87(2)(b) (Board Review 05).

PO Demarino denied that any additional officer assisted in placing § 87(2)(b) in handcuffs, and denied seeing any other officer use any physical force against § 87(2)(b) (Board Review 06).

As previously mentioned, Det. Solmonsohn did not have an independent recollection of this incident and could not provide any testimony for these allegations (Board Review 07).

§ 87(2)(g)
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§ 87(2)(g)

Allegation F – Force: Police Officer Vincent Demarino used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he went to the ground face down with both of his arms by his side. § 87(2)(b) was kicked multiple times in his left ribs – the specific amount of times § 87(2)(b) could not estimate – by who he believed was a 5'9" tall, 180-to-190-pound white male officer, who appeared to be in his 40s. An officer, who § 87(2)(b) described as a 5'9" tall, 200-pound, bald white male, who appeared to be in his 40s, then kicked him in the back of his right thigh. An officer, who § 87(2)(b) described as a 5'6" tall, 170-to-175-pound male with a tan complexion who appeared to be either Italian or Hispanic, appeared to be in his 30s, and had a big nose with dark hair on the side of his head and balding on top, punched § 87(2)(b) approximately 15 times in his right ribs. § 87(2)(b) further alleged that he was struck a "few times" in the back of his head, but he did not know who struck him or what he was struck with. After approximately two and a half minutes, the officers handcuffed § 87(2)(b) § 87(2)(b) reported internal bruising to his right ribs as a result of this force. During a follow-up phone call, § 87(2)(b) denied moving his arms or legs during the physical altercation with the officers (Board Reviews 03 and 15).

As previously mentioned, § 87(2)(b) stated that she was placed in handcuffs during the warrant execution while inside of her bedroom, and that she was unable to see § 87(2)(b)'s apprehension based on where she was. When officers escorted § 87(2)(b) out of the apartment, § 87(2)(b) observed that he was bleeding from his ear and his lip was "busted," and heard § 87(2)(b) complain to officers of pain to his ribs (Board Review 08).

As previously discussed, § 87(2)(b) was ultimately unresponsive to contact attempts made by the investigation. Therefore, a statement regarding this incident from § 87(2)(b) could not be obtained (See IAs).

§ 87(2)(b) provided multiple photos to the CCRB on July 30, 2018. The photos collectively show a scar to the back of his head, a large contusion to his left rib cage, an abrasion to his right leg, and a contusion to his left bicep (Board Review 04).

As previously mentioned, § 87(2)(b)'s medical records show that § 87(2)(b) went to the hospital in police custody on the date of the incident and complained of pain to his right ribs and left hips as a result of being tackled and punched by the police in the ribs and head. Medical personnel observed an abrasion to his back, a contusion to his chest, trauma to his right ribs, ecchymosis, a blood disorder, and a contusion to his left hip, and blunt abdominal trauma. § 87(2)(b) was diagnosed with a chest contusion and musculoskeletal pain (See Privileged Documents).

PO Demarino, who is a § 87(2)(b)-old, 5'10" tall, 230-pound white male with brown eyes according to his CCRB Interview Pedigree Sheet, testified that once § 87(2)(b) was on the ground, he refused to put his hands behind his back, tensing his body. PO Demarino pulled both of § 87(2)(b)'s arms close enough to handcuff him, and denied punching, kicking, or striking § 87(2)(b) while he was on the ground. PO Demarino denied seeing any injuries on § 87(2)(b). PO Demarino was shown the above-mentioned injury photos, but denied seeing any of these injuries on § 87(2)(b) at the time of this incident (Board Review 06).

TRI Report #§ 87(2)(b), generated by PO Demarino, did not note any hand strikes or foot strikes on behalf of PO Demarino. The report further notes that § 87(2)(b) did not sustain any injuries (Board Review 16).

PO Ward denied seeing how § 87(2)(b) was ultimately placed in handcuffs after being taken to the ground because he turned his attention towards the bathroom window and the white substance. PO Ward could not recall which officers came to help apprehend § 87(2)(b) nor could he recall how many officers did so. PO Ward denied seeing any visible injuries to § 87(2)(b) as a result of this incident. PO Ward was shown the above-mentioned injury photos, but denied seeing any of these injuries on § 87(2)(b) at the time of this incident (Board Review 05).

As previously discussed, Det. David Solmonsohn did not have an independent recollection of this incident and could not provide any testimony for these allegations (Board Review 07).

A document request from DAO for an arrest photograph from § 87(2)(b)'s arrest yielded negative results. Also, Ms. Muse, the initial reporter of this incident to IAB, noted during her intake call that an arrest photograph for § 87(2)(b) could not be located, which she found "interesting." Furthermore, a request from IAB On-Site for a Medical Treatment of Prisoner Report for § 87(2)(b) yielded negative results (Board Reviews 10 and 11).

Although PO Demarino does not fit the physical description provided by § 87(2)(b) of any of the subject officers, a force allegation is being pleaded against him given his acknowledgement of being the primary officer to apprehend § 87(2)(b).

§ 87(2)(g)

Allegation G – Force: Officers used physical force against § 87(2)(b)

It is undisputed that only one TRI Report, generated by PO Demarino, was drafted for this incident.

As previously stated, § 87(2)(b) alleged in his in-person statement that he was kicked multiple times in his left ribs – the specific amount of times § 87(2)(b) could not estimate – by who he believed was a 5’9” tall, 180-to-190-pound white male officer, who appeared to be in his 40s. An officer, who § 87(2)(b) described as a 5’9” tall, 200-pound, bald white male, who appeared to be in his 40s, then kicked him in the back of his right thigh. An officer, who § 87(2)(b) described as a 5’6” tall, 170-to-175-pound male with a tan complexion who appeared to be either Italian or Hispanic, appeared to be in his 30s, and had a big nose with dark hair on the side of his head and balding on top, punched § 87(2)(b) approximately 15 times in his right ribs. § 87(2)(b) further alleged that he was struck a “few times” in the back of his head, but he did not know who struck him or what he was struck with (Board Review 03).

As previously mentioned, § 87(2)(b) denied, in an unsworn phone statement to the CCRB, seeing the physical interaction between § 87(2)(b) and officers. Also, as previously mentioned, § 87(2)(b) was ultimately unavailable to the investigation (Board Review 08; See IAs).

As previously stated, PO Ward did not recall which officers came to help apprehend § 87(2)(b) nor could he recall how many officers did so. PO Ward denied seeing any officer punch, kick, or strike § 87(2)(b) (Board Review 05).

PO Demarino, as previously mentioned, denied that any additional officer helped him handcuff § 87(2)(b) and denied seeing another officer punch, kick, or strike § 87(2)(b) (Board Review 06).

Det. Solmonsohn, who was assigned to “cuff and toss” during the execution of the warrant and is a § 87(2)(b) -old, 6’ tall, 200-pound white male with brown hair according to the MOS Photo Machine and CTS, did not have an independent recollection of this incident, as previously stated, and could not provide any testimony for these allegations (Board Reviews 07 and 09).

A search of the MOS Photo Machine and CTS for all of the officers listed on the Pre-Warrant Execution Plan indicated that none of the officers listed fit § 87(2)(b)’s physical

description of the additional subject officers that used force against him. More specifically, none of the officers listed on the Pre-Warrant Execution Plan appeared bald or partially bald in their MOS photos, and none of the officers are listed as having these physical features (Board Review 17).

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b)
- As of January 4, 2019, the New York City Comptroller's Office has no record of a Notice of Claim regarding this incident (Board Review 13).

Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- PO Ward has been a member-of-service for eight years and has been a subject in eight CCRB complaints and 18 allegations, none of which have been substantiated. § 87(2)(g)
- PO Demarino has been a member-of-service for five years, and this is the first CCRB complaint to which he has been a subject.

Squad No.: 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date